

University of Technology,  
Sydney  
Faculty of Law  
2007

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# The Normative Basis for Combating Human Trafficking:

*A Victim - Centred  
Framework*

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A thesis submitted in  
fulfilment of the requirements  
of the award of the degree

**Doctor of Philosophy**

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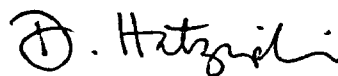
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## CERTIFICATE OF ORIGINALITY

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I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person nor material which to a substantial extent has been accepted for the award of any other degree or diploma of the university or other institute of higher learning, except where due acknowledgment is made in the text.

I also declare that the intellectual content of this thesis is the product of my own work, even though I may have received assistance from others on style, presentation and language expression.



Dimitra Hatziplis

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## ACKNOWLEDGMENTS

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I first considered commencing post graduate research after meeting two very inspirational women who had dedicated their long standing careers to the pursuit of excellence in international humanitarian law. Professor Erica-Irene Daes' work on furthering the rights of indigenous people (amongst many other valuable contributions to the United Nations and international arena), has been inspirational in the way that she has touched the lives of so many, especially the aboriginal community in Australia. Similarly, Professor Kaliope Koufa's work and contribution as Special Rapporteur on terrorism and human rights also encouraged me to look more closely into pursuing further studies in international human rights law.

To that end, my good friend and endlessly patient supervisor, Professor Sam Blay from the University of Technology, Sydney, turned my interest to human trafficking, with his passionate concern for the plight of trafficking victims and his keen interest in the area. In his invaluable support to me during the years of writing my thesis, I would like to thank Dr Blay for acting as my soundboard in listening to my evolving ideas regarding my topic and providing me with his valuable insight. His great knowledge and understanding of the topic provided for many interesting debates. Indeed, this work would not have been possible without Dr Blay's, encouragement and commitment, and I honestly don't believe that I could have ever completed it without him. I would also like to thank him for introducing me to the area of human trafficking. The existence of human trafficking in modern times is to be abhorred and all efforts must be made to cease the crime. This topic is indeed worthy of many years of research.

My final and unreserved thanks go to my husband and parents. My wonderful husband Arthur Kaffes has displayed great interest in my pursuing further studies and has given me endless support and encouragement. I attribute the completion of this thesis to his steadfastness and resolve in motivating me to keep going even when it seemed that the task was endless. I also appreciate his interest in my topic, and for providing me with a non-legal perspective in trafficking which kept me focused on the victim. I would also

like to thank my parents George and Helen Hatziplis for their intense passion for furthering the education of their children, giving me the opportunity to pursue my interests in international law. They have always encouraged me to explore the various paths that have presented themselves to me, giving me confidence in my abilities and providing me with moral and practical support.

Finally, I dedicate this thesis to my mother for her commitment to the respect, equal rights and education of women. Her strength and resolve in all matters have made her the most inspirational woman I know.

Any omissions and errors in this work are my sole responsibility.

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## ABSTRACT

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Human trafficking is the movement of a person from one place to another through the use of force, fraud or coercion for the purpose of exploitation. It is thought to be one of the fastest growing international crimes generating profits only second to arms trading. It is also the largest manifestation of contemporary slavery. In an effort to suppress trafficking, the international community came together in 2000 to draft international law to combat the problem. Unfortunately, these efforts have had little impact on reducing trafficking. It is the position of this thesis that one of the reasons for this failure is that there was little normative legal theory underpinning the provisions in the instruments adopted to deal with trafficking. The articulation of a clear normative premise for action by states in combating trafficking is essential because without it the objectives for international action become ambiguous leaving room for varying interpretations for state action.

Essentially, the existing international legal framework as reflected in the international instruments is a product of infused criminal law and migration concerns neither of which has been adequate in dealing with the problem of trafficking. Indeed, many of the responses by state parties mirror historical attempts to deal with trafficking from the early 1900s. What is missing however is a proper victim centred approach which would work to reduce trafficking, protect victims and even address state concerns by enhancing criminal law efforts.

The search for an appropriate normative theoretical framework necessarily requires an analysis of the role played by migration, gender, consent, human rights and slavery in trafficking. Indeed, all of these factors provide valuable insights into trafficking while also illustrating the motivation behind different views concerning trafficking. For example, migration concerns and crime control lie at the heart of state interests whereas many feminist groups perceive trafficking to be a gender issue.

After a detailed analysis of the various issues underpinning trafficking, appropriate law reforms can be formulated that are informed by ideologies set in values, attitudes and

beliefs that are fundamentally victim – centred. When the well being of the victim is prioritised, the response that flows will have the effect of also providing tools for dealing with irregular migration, crime control, gender and labour issues. However, this can only result from a shift in focus to the exploitation of the victim and a re-evaluation of the definition and treatment of slavery. The current perception of slavery as a practice steeped in proprietary rights akin to chattel slavery is antiquated and provides little insight into modern practices. However this perception can be corrected with a re-definition of slavery as an infringement of personal autonomy. This would result in a clearer understanding and treatment of modern day slavery. This also leads to the conclusion that trafficking should be considered a sub category of slavery and that efforts to eradicate trafficking should also be matched by efforts to eradicate slavery in general.

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## ABBREVIATIONS

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AFP	Australian Federal Police
BVF	Bridging Visa F
BWS	Battered Wife Syndrome
CJSC	Criminal Justice Stay Certificate
CJSV	Criminal Justice Stay Visa
GAATW	Global Alliance Against Traffic in Women Coalition
HRC	Human Rights Caucus
IHRN	International Human Rights Network
ILO	International Labour Organisation
IOM	International Organisation for Migration
NGO	Non Governmental Organisation
ODIHR	Office for Democratic Institutions and Human Rights
OPTN	Organ Procurement and Transplantation Network (United States)
PWPTV	Permanent Witness Protection (Trafficking) Visa
SAARC	South Asian Association for Regional Cooperation
SRTR	Scientific Registry of Transplant Recipients
TVPA	<i>Trafficking Victims Protection Act of 2000</i>
TWPTV	Temporary Witness Protection (Trafficking) Visa
UN	United Nations
UNAFEI	Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
VIS	Victim Impact Statement

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